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No. 93-

In The

Supreme Court of the United States

October Term, 1993

THIRD NATIONAL BANK IN NASHVILLE,

Petitioner,

vs.

THE COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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I.

QUESTIONS PRESENTED FOR REVIEW

1. May the Louisiana Court of Appeal overrule this Court's decision in *Hanson v. Denckla*, 357 U.S. 255, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), by holding that a non-resident trustee of an insurance trust is subject to the personal jurisdiction of a state in which the trustee has no office, holds no assets, and has solicited no business?

2. Does a national bank have sufficient "minimum contacts" with a forum state when it acts as the custodian of an insurance policy outside the forum and it has no offices or employees in the forum, solicits and conducts no business in the forum, and holds no trust assets in the forum?

PARTIES TO THE PROCEEDINGS BELOW

The following is a list of parties to the proceeding in the Louisiana Supreme Court:

1. SunTrust Banks, Inc. (parent corporation of Third National Corporation).

2. Third National Corporation (holding company of Third National Bank in Nashville).

3. Third National Bank in Nashville ("Third National"), a national banking association.

4. Douglas Green, former Commissioner of Insurance for the State of Louisiana.

5. Group Programs, Inc. of Breaux Bridge, Louisiana.

6. National Union Fire Insurance Company of Pittsburgh, Pennsylvania.

7. Liberty Mutual Insurance Company.

8. Patrick Huval.

9. Dianne Flores.

10. Thomas K. Huval.

11. Dale F. Huval.

12. Kathryn Pontiff.

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STATEMENT OF REPORTS OF OPINIONS

The trial court's memorandum opinion granting Third National's motion to dismiss is not published. The opinion of the Louisiana Court of Appeal, First Circuit, reversing the trial court's decision, is reported at 622 So. 2d 275 (La. Ct. App. 1st Cir. 1993). The ruling of the Louisiana Supreme Court denying the application of Third National for a writ of certiorari has not been officially published. It is published unofficially at 1993 La. LEXIS 3508 (La. Dec. 10, 1993).

The Appendix contains the trial court's memorandum opinion, **A-11**, the decision of the Louisiana Court of Appeal, **A-3**, and the decision of the Louisiana Supreme Court. **A-1**.

STATEMENT OF JURISDICTION

By final order entered on December 10, 1993, the Louisiana Supreme Court denied Third National's application for a writ of certiorari to review the judgment of the Louisiana Court of Appeal which found that Third National had sufficient minimum contacts with Louisiana for courts in Louisiana to exercise personal jurisdiction over it.

The Louisiana Supreme Court is the state court of last resort in Louisiana. Third National invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS RELEVANT TO THIS PETITION

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

> A. A court may exercise personal jurisdiction over a non-resident, who acts directly or by an agent, as to a cause of action arising from any of the following activities performed by the non-resident:
>
> (1) Transacting any business in this state.
>
> (2) Contracting to supply services or things in this state.
>
> (3) Causing injury or damage by an offense or quasi offense committed through an act or omission in this state.
>
> (4) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state.

> B. In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a non-resident on any basis consistent with the constitution of [Louisiana] and the Constitution of the United States.

La. Code Civ. Proc. Ann. art. 13:3201 (West 1991).

> No financial institution or officer or employee thereof shall be deemed or implied to be acting as a fiduciary, or have a fiduciary obligation or responsibility to its customers or to third parties other than shareholders of the institution, unless there is a written agency or trust agreement under which the financial institution specifically agrees to act and perform in the capacity of a fiduciary. The fiduciary responsibility and liability of a financial institution or any officer or employee thereof shall be limited solely to performance under such a contract and shall not extend beyond the scope thereof.

La. Rev. Stat. Ann. § 6:124 (West 1991).

STATEMENT OF THE CASE

The Commissioner of Insurance for the State of Louisiana (the "Commissioner") filed a petition in Louisiana state court on December 28, 1990, in his capacity as liquidator of the Summit Insurance Plan Trust, a multi-employer health insurance plan ("Summit"). **A-23.**[1] The petition names as defendants Group Programs, Inc., a Louisiana corporation and administrator of Summit ("Group

[1] Citations refer the Court to the Appendix filed with this Petition.

Programs"); Third National, the "trustee" of Summit; insurers of Group Programs and Third National; and individual employees of Group Programs. The Petition claims that various actions and/or inactions of the defendants caused Summit's insolvency. The Commissioner seeks to recover more than $8 million, allegedly representing the amount of unpaid health and/or life insurance claims of employees and/or employer participants in Summit. *Id.*

Third National's connection with Summit began in 1985 when Gibbs Smith, an existing customer of Third National and a resident of Nashville, Tennessee, approached Third National about acting as a trustee under a multi-employer insurance trust. **A-79**. The sole purpose of the trust was to apply for and hold group master insurance policies. **A-47-48.**

Unbeknownst to Third National, Gibbs Smith was acting on behalf of Patrick Huval, a Louisiana resident and president of Group Programs. **A-79-80**. Patrick Huval had hired Gibbs Smith as a consultant and had travelled to Nashville in March 1985 to discuss with Mr. Smith the formation of such trusts. **A-79**. Mr. Smith supplied Patrick Huval with a form document styled "Insurance Trust Agreement," and submitted it to Third National for execution. *Id.*

The Insurance Trust Agreement (the "Trust Agreement") was executed in Nashville by Third National and Group Programs on March 8, 1985. **A-47**. The Trust Agreement established the Summit Insurance Plan Trust as a Tennessee trust, and specifically provided

that the trust was to be governed by Tennessee law. **A-53**. The Trust Agreement does not mention Louisiana. *See* **A-47-54**.

Third National had only two duties under the Trust Agreement. These duties were strictly custodial: Third National was required (1) to make application, at Group Programs' direction, for a group insurance policy or policies, and (2) to hold any such policy in Nashville, Tennessee. **A-47-48**. For these two minimal duties, Third National was paid $500 per year. **A-13**.

Group Programs was the "grantor" under the Trust Agreement. **A-47**. It delegated to itself all duties of administration of Summit, including all duties and responsibilities relating to the operation of the Trust. **A-49**. Group Programs was solely responsible for choosing the appropriate group insurance policy and insurance company which would provide coverage for Summit participants. Group Programs was assigned to perform all discretionary duties associated with Summit, to pay or collect premiums, and to make all decisions related to the group master insurance policies. *Id.* The Trust Agreement provides that "the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder." *Id.* It also states that Third National "shall have no direct or implied obligation to any Participating Employers." **A-52**.

From its commencement in 1985 until it was placed into rehabilitation in 1990, Summit operated in Louisiana and other states providing health insurance benefits to participating employers' employees. **A-11**. There is no

evidence that Third National understood when it executed the Trust Agreement that the insurance policy or policies it was to hold were to affect Louisiana residents. In fact, the Trust Agreement is governed by Tennessee law and requires that insurance policies obtained be from companies authorized to conduct insurance business in Tennessee. **A-53**; **A-48**. Further, Third National's initial correspondence related to Summit was directed to Gibbs Smith in Nashville. **A-77**.

The only group insurance policy ever obtained for use by Summit participants was one from Durham Life Insurance Company (the "Durham Policy"). **A-12**. The Durham Policy remained in effect from Summit's commencement in 1985 allegedly through June 1, 1988, when Durham purportedly terminated the Durham Policy. *Id.* Third National never received notice that Durham Life Insurance Company was attempting to terminate the Durham Policy. **A-63**.

After the purported termination of insurance coverage for Summit, Group Programs continued operating Summit as an uninsured or self-insured entity. **A-32**. After June 1, 1988, Group Programs received annual premiums in excess of $20 million, and paid from these premiums claims from Summit's participants and a commission to itself. **A-13**; **A-72-73**. Eventually, however, claims exceeded premiums, Summit lacked the ability to make payments to claimants, Summit became insolvent, and the Commissioner was appointed to liquidate Summit. **A-23**.

The Commissioner commenced this action in the Nineteenth Judicial District Court, Parish of East Baton

Rouge, Louisiana. *Id.* The Petition seeks to hold Third National and the other defendants liable for alleged breaches of contract, negligence, and breach of fiduciary duties. **A-33**.

The case was removed by Third National to the United States District Court for the Middle District of Louisiana. While pending in federal court, Third National filed a motion to dismiss the action against it on the basis that it was not subject to personal jurisdiction in Louisiana. **A-44**. The action was later remanded to state court,[2] which held a "contradictory evidentiary hearing"[3] on Third National's challenge to personal jurisdiction. **A-12**.

On January 31, 1992, the trial court granted Third National's motion and dismissed it from the action. **A-17**. The trial court held that Third National had insufficient minimum contacts with Louisiana to permit the court to exercise personal jurisdiction over it. **A-14**. The trial court

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[2] The basis for Third National's removal was that the Employee Retirement Income Security Act ("ERISA") granted to federal courts exclusive jurisdiction over the Commissioner's claims. The district court, however, found that the petition did not fall under ERISA's exclusive jurisdiction and remanded the case to state court.

[3] Louisiana procedure allows a trial court to hold either a "contradictory" or a "non-contradictory" evidentiary hearing on an exception to personal jurisdiction. *See de Reyes v. Marine Management and Consulting, Ltd.*, 586 So. 2d 103, 109 (La. 1991). At a non-contradictory hearing, the non-moving party must make only a prima facie case of minimum contacts. *Id.* At a contradictory evidentiary hearing, the moving party must prove facts in support of its position that jurisdiction is proper "by a preponderance of the evidence." *Id.*

never reached the question of whether subjecting Third National to personal jurisdiction in Louisiana would result in fair play and substantial justice. *Id.*

In its order sustaining Third National's challenge to personal jurisdiction, the trial court emphasized the absence of any acts by Third National to establish a general presence in Louisiana as well as the absence of any acts to "purposefully" establish contacts or relationships with Louisiana in connection with Summit. A-13.[4]

As the trial court noted, Third National is a national banking association with its principal place of business in Nashville, Tennessee. A-12. It has no branches, offices, or employees in Louisiana. *Id.* It does not transact any business in Louisiana, and does not contract to supply goods or services there. *Id.* Third National did not take any action purposefully directed toward Louisiana in connection with the Summit Trust. A-14.

The trial court concluded that Third National's connection to Summit was not the result of any action by Third National purposefully directed toward Louisiana. The trial court noted that Third National had not solicited the Summit business from Group Programs, nor did Patrick Huval, Group Program's president, ever meet with anyone from Third National. *Id.* The court also found that all instruments relating to Third National's connection with Summit were executed in Tennessee. A-13. The trial court further emphasized that under the

[4] None of the factual findings of the trial court were disturbed by the Louisiana Court of Appeal. A-7.

Trust Agreement, Third National's custodial duties under the Trust Agreement were minimal, and that its compensation, $500 per year, was commensurate with its assumption of minimal duties. *Id.* The trial court also emphasized that Third National had no knowledge, control or ownership of any funds located in Louisiana relating to the operation of Summit. *Id.*

The Commissioner appealed the trial court's final order to the Louisiana Court of Appeal. On July 2, 1993, the Louisiana Court of Appeal entered a judgment reversing the trial court's dismissal of Third National. A-3. In a brief opinion, the Court of Appeal held that Third National had established sufficient minimum contacts with Louisiana to permit Louisiana courts to exercise jurisdiction over it. A-6. The court held that minimum contacts were present simply because Third National was "the paid trustee of an insurance trust operating[5] at one time solely in this state, which trust was formed only as a result of the compensated actions of [Third National] entering into the [Trust Agreement]." *Id.*; 622 So. 2d 275, 277 (La. Ct. App. 1st Cir. 1993). Although the trial court never reached the question of whether it is fair to subject Third National to personal jurisdiction in Louisiana, the Court of Appeal apparently made this determination as well. A-6.

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[5] The Court's use of "operating" underscores its misperception of Third National's limited, passive duties. Group Programs was *administrator* of the Trust, not Third National, which was merely to hold an insurance policy in safekeeping.

On August 19, 1993, the Court of Appeal denied Third National's application for rehearing of its ruling. A-8. Third National timely filed a petition to the Louisiana Supreme Court for supervisory writs to the Court of Appeal on September 20, 1993. The Louisiana Supreme Court denied the petition on December 10, 1993. A-1.

Third National seeks this Court's review by certiorari pursuant to 28 U.S.C. § 1257.

REASONS FOR GRANTING THE WRIT AND ARGUMENT

A writ of certiorari should be granted because the Louisiana Court of Appeal has:

1. Decided a federal constitutional question in complete conflict with the decision of this Court in *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958);

2. Decided a federal constitutional question in a manner that departs from the analysis required by this Court in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985), and other cases; and

3. Decided a federal constitutional question in a way that adversely affects interstate commerce.

I.

The Decision of the Louisiana Court of Appeal Directly Conflicts with This Court's Decision in *Hanson v. Denckla*, 357 U.S. 235 (1958).

The Louisiana Court of Appeal held that Third National was subject to personal jurisdiction in Louisiana solely because it acted as a "trustee" of a trust that "operated" in Louisiana. This holding flatly conflicts with the holding of this Court in *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958). For this reason alone, Third National's petition should be granted.

Hanson, like the instant case, involved an attempt by a state to exercise personal jurisdiction over a non-resident trustee. In *Hanson*, the settlor had executed trust instruments in Delaware naming Delaware companies as trustees. The settlor moved to Florida, where she later died. A dispute arose over whether certain of her property should pass under a residuary clause in her will or pursuant to the Delaware trusts. The legatees of the will filed suit in Florida seeking a declaratory judgment as to what property passed under the will. The Delaware trustees were named as defendants. The Florida court eventually held that the Florida courts had personal jurisdiction over the Delaware trustees, and that the property passed under the residuary clause of the will.

After the Florida litigation was initiated but before judgment, the executrix filed a declaratory action in Delaware to determine who was entitled to the trust assets in that state. Following entry of the Florida decree, the executrix argued that it was res judicata of the Delaware dispute. The Delaware court rejected this

argument, holding that the Florida decree was not binding because the Florida court had no jurisdiction over the Delaware trustees. The Delaware court also determined that the property had passed under the trusts.

At issue before this Court was whether the Florida court erred in holding that it had jurisdiction over the Delaware trustees, and whether Delaware erred in refusing full faith and credit to the Florida decree.

In its opinion, this Court traced the evolution of the rules of personal jurisdiction from the "rigid rule" of *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1877), to the "flexible standard" of *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). This Court emphasized that despite the relaxation of the rigid *Pennoyer* standard, constitutional limits still existed on a state's exercise of personal jurisdiction. *Hanson*, 357 U.S. at 250-51, 78 S. Ct. at 1238. This Court noted that although technological progress had increased the flow of commerce among the states, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* at 251, 78 S. Ct. at 1238 (citing *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418, 77 S. Ct. 1360, 1362, 1 L. Ed. 2d 1456 (1957)).

This Court also rejected a "center of gravity" theory of personal jurisdiction. According to this Court, questions of personal jurisdiction do not turn upon whether the forum is the "center of gravity" of the controversy or the most convenient forum. Rather, the issue is personal jurisdiction, not choice of law, and is

determined by considering the acts of the non-resident who is haled into court in a distant forum. 357 U.S. at 254, 78 S. Ct. at 1240.

This Court held that the Delaware trustees were not subject to in personam jurisdiction in Florida. It stated:

> The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business in that State either in person or by mail. . . . The cause of action is not one that arises out of an act done or transaction consummated in the forum State.

Id. at 251, 78 S. Ct. at 1238.

The conflict between this Court's opinion in *Hanson* and the decision of the Louisiana Court of Appeal is readily apparent. Like the trustee in *Hanson*, Third National has no offices and transacts no business in Louisiana. It never solicited business in Louisiana either by person or by mail, and the Commissioner's cause of action does not arise out of any act done or transaction consummated by Third National in Louisiana. In addition, no trust assets were ever present in Louisiana.[6]

Moreover, in finding personal jurisdiction over Third National, the Louisiana Court of Appeal relied upon factors that this Court expressly found to be insufficient in *Hanson*. In its decision, the Louisiana Court of Appeal

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[6] The Commissioner's argument to the contrary is discussed *infra* at 15-16 and n. 7.

identified the following factors to support jurisdiction over Third National:

> In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the non-resident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson [v. Great Midwest Fur Company]*, 395 So. 2d [840] at 842 [La. App. 1st Cir. 1981].

A-6. In other words, the Louisiana Court of Appeal held that an out-of-state bank that agrees to hold, as a "compensated trustee," a group insurance policy that ultimately affects Louisiana residents is subject to personal jurisdiction in Louisiana. Even though this Court's holding in *Hanson v. Denckla* was the cornerstone of Third National's argument, the Louisiana Court of Appeal never cited or addressed the *Hanson* decision in its short opinion.

The Court of Appeal's holding flatly conflicts with *Hanson* because the same factors were held to be insufficient there. As in this case, the trustee in *Hanson* was compensated, the Florida litigants claimed that the trust affected them, and the trust was formed when the bank entered into a trust agreement. According to this Court, these factors were insufficient to support an exercise of personal jurisdiction over the trustee in

Hanson. They are likewise insufficient to support an exercise of jurisdiction over Third National.

No legally significant distinctions exist between this case and *Hanson*. In the courts below, the Commissioner sought to distinguish this case from *Hanson* by arguing that here, unlike *Hanson*, trust assets were in fact located in the forum. The Commissioner argued that these assets consisted of operating bank accounts maintained in Louisiana in the name of Summit, and excess insurance policies obtained after the Durham Policy allegedly terminated in 1988.

However, these facts, even if established, fail to show purposeful activity by Third National directed toward Louisiana.[7] The undisputed facts establish that Third National had no ownership interest in or control over either the bank accounts established by Group Programs or the excess insurance policies that Group Programs obtained. **A-13**. As the Trust Agreement makes clear,

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[7] Moreover, under the law of Louisiana and Tennessee, the bank accounts and excess insurance policies never became assets of the trust. In both states, where legal title to assets does not repose in the trustee, such assets are not assets of the trust. *See St. Charles Land Trust v. St. Amant*, 253 La. 243, 217 So. 2d 385 (1968); *Sternberger v. Glenn*, 175 Tenn. 644, 137 S.W.2d 269 (1940). Because Third National was not the signatory to the operating checking accounts in Louisiana, was not named as the owner of the excess policies, and in fact was unaware of the existence of either of these assets, it did not own the assets, and the assets could not have become property of the Trust. Further, because the Trust Agreement does not identify any asset other than insurance policies, no breach of fiduciary duty action may be premised on these allegations. La. Rev. Stat. Ann. § 6:124 (West 1991).

Third National had no duties related to the administration of Summit. **A-49**. Further, Third National had no knowledge of the existence of these bank accounts or insurance policies. **A-62**. Accordingly, the location of these assets is irrelevant in determining the personal jurisdiction question.

The Court of Appeal's opinion that Third National is subject to personal jurisdiction in Louisiana mimics the mechanical analysis urged by the Commissioner. The Court of Appeal elevates form over substance and ignores the standard pursuant to which Louisiana's exercise of personal jurisdiction over Third National must be judged: whether Third National "purposefully availed itself of the privilege of conducting activities within [Louisiana], thus invoking the benefit and protection of its laws." *Hanson*, 357 U.S. at 253, 78 S. Ct. at 1239-40. Because Third National was not involved in establishing the bank accounts or procuring the excess policies, to ask whether these assets were physically present in Louisiana obscures the controlling question. The physical location of these alleged "assets" in Louisiana fails to show any activity by Third National purposefully directed toward Louisiana.

The decision of the Louisiana Court of Appeal directly conflicts with this Court's opinion in *Hanson*. Third National's petition should be granted to resolve this conflict.

II.

The Erroneous Decision of the Louisiana Court of Appeal Resulted from the Court's Departure from the Analysis Required by This Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and Its Progeny.

The Louisiana Court of Appeal reached an erroneous result because of its radical departure from the personal jurisdiction analysis directed by this Court in *International Shoe* and its progeny. The decision of the Louisiana Court of Appeal stemmed from its apparent belief that a contract (the Trust Agreement) between Third National and a resident of the forum, coupled with Third National's label or title of "trustee," were sufficient factors upon which to confer jurisdiction. This belief resulted in the court's failure to address whether Third National in fact purposefully directed activities toward Louisiana.

This Court has repeatedly rejected such "mechanical" tests for determining personal jurisdiction. *See, e.g., Burger King v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) ("The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests"). This Court has also repeatedly rejected the notion that a non-resident's contractual relationship with a resident of the forum, standing alone, provides a sufficient basis for the exercise of personal jurisdiction. *Id.*

In *Burger King v. Rudzewicz*, this Court upheld Florida's exercise of personal jurisdiction over a non-resident franchisee, but did so only after it reviewed the long history of prior negotiations between the parties,

consequences anticipated as a result of the parties' contract, and the actual terms of the contract. *Id.* This Court made it clear that the existence of a contract with a resident of the forum and the non-resident's status as a "franchisee" of a company located within the forum were insufficient contacts to support personal jurisdiction. This Court noted:

> If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington*, supra, 326 U.S., at 319, 66 S.Ct. at 159, or on "conceptualistic . . . theories of the place of contracting or of performance," *Hoopeston Canning Co. v. Cullen*, 318 U.S., at 316, 63 S. Ct., at 604. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.*, at 316-317, 63 S. Ct., at 604-605. *It is these factors – prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.*

Id. at 479, 105 S. Ct. at 2185 (emphasis supplied).

This Court has followed this approach consistently. Even when this Court has found sufficient minimum contacts to support an exercise of personal jurisdiction

over a non-resident defendant, this finding has been made only after a thorough examination of the substance of the non-resident's contacts with and/or relationship to the forum.

For example, in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), this Court held that a non-resident insurer was subject to jurisdiction in California. This decision was not premised upon the simple fact that the insurance company was an "insurer," or that it had entered into a contract with a resident of the forum. Rather, this Court found determinative that the insurance company had solicited the petitioner's decedent's business in California, the insurance contract was "delivered" in California, and the premiums were mailed from California. 355 U.S. at 221-22, 223, 78 S. Ct. at 200, 201.

Derailed by its own label-oriented approach, the Louisiana Court of Appeal did not attempt any such analysis. Rather, the court simply held that trustees of trusts which "operate" in a forum state are subject to personal jurisdiction in the state where beneficiaries of the assets of the trust (such as an insurance policy) are located.[8] Although this rule is easily applied, it is incompatible with this Court's prior decisions.

Not only does the Louisiana Court of Appeal's result deprive Third National of an important constitutional

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[8] The Louisiana Court of Appeal also glossed over an important distinction between the *trust*, which existed as a result of the Trust Agreement, and the health insurance *plan*, which Group Programs unilaterally operated as an uninsured entity.

right, but its label-oriented analysis assures that its error will be repeated. Its decision is reported, giving it additional precedential value. The Court should grant review to correct Louisiana's erroneous oversight of the precedents of this Court.

III.

Under the Standard Set Forth by This Court in *International Shoe* and Its Progeny, Third National Does Not Have Sufficient "Minimum Contacts" with Louisiana To Be Subject to Personal Jurisdiction There.

Had the Louisiana Court of Appeal taken the approach mandated by earlier decisions of this Court in *Hanson* and *Burger King*, it would have affirmed the trial court's dismissal of Third National because of the paucity of jurisdictionally relevant contacts between Third National and Louisiana. This conclusion follows from a brief examination of the four factors enumerated by this Court in *Burger King*, 471 U.S. at 479, 105 S. Ct. at 2185.

First, the negotiations leading up to the execution of the Trust Agreement in 1985 took place in Nashville, Tennessee. Third National did not solicit the business and never met with Patrick Huval, a Louisiana resident who formed Summit. In fact, Third National was not even aware that the trust would operate in the state of Louisiana.

Second, Third National clearly could not and did not plan or anticipate any future involvement in Louisiana since it was unaware of Summit's connection with Louisiana.

Third, there is nothing in the contract itself that should have led Third National to anticipate being haled into court in Louisiana. The contract provides that it is to

be governed by *Tennessee* law. **A-53**. Aside from applying for an insurance policy at Group Program's direction, the only duty assumed by Third National under the contract was to hold an insurance policy, nothing more. **A-48**. The only policy obtained pursuant to the Trust Agreement was "delivered in and is governed by the laws of Tennessee."[9] **A-57**. In fact, the Trust Agreement required that Third National obtain the insurance policy or policies from "an insurance company or companies duly authorized to conduct the business of insurance *in the State of Tennessee* and other states in which Participating Employers are located." **A-48**. The Trust Agreement does not mention Louisiana.

Finally, Third National's course of performance under the contract also reveals a lack of any activity by Third National "purposefully directed" toward Louisiana. Third National did receive a nominal annual fee of $500 apparently drawn on the administrator's controlled accounts in Louisiana. However, the mere fact that it was paid from an account in Louisiana is an insufficient basis to find personal jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 1873, 80 L. Ed. 2d 404 (1984). Third National's

---

[9] The Commissioner has argued that although the contract limited Third National's duties, Louisiana law nevertheless imposed other "implied" or "inherent" duties, and that these duties subject Third National to jurisdiction there. The Louisiana court did not address this argument. Although it appears that Tennessee law governs the Trust Agreement, any argument that Louisiana law imposes implied duties on Third National, is clearly erroneous pursuant to La. Rev. Stat. Ann. § 6:124 (West 1991).

limited duties were all performed in Nashville, Tennessee.

To ignore the analysis required by this Court, or to attribute tacitly actions by Group Programs to Third National in order to satisfy standards of *Hanson* and *Burger King* is impermissible. As administrator of Summit, Group Programs performed substantial activities in Louisiana. These activities, however, are irrelevant in determining whether Third National took action in Louisiana sufficient to subject it to personal jurisdiction there. As this Court noted in *Hanson v. Denckla*:

> The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws.

357 U.S. at 253, 78 S. Ct. at 1239-40. *Accord World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S. Ct. 559, 564, 62 L. Ed. 2d 490 (1980). *See also Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102, 109, 107 S. Ct. 1026, 1030, 94 L. Ed. 2d 92 (1987) ("Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State.") (emphasis in original). Recognizing these prior decisions from this Court, the trial court correctly concluded that "the proper focus is on actions taken by Third National Bank, not the

activities of the Trust, Group Programs, Inc. or Mr. Huval." A-14. In this case, the trial court found there were no such actions.

The issue is thus narrowly drawn: does a national bank acting merely as custodian of a purportedly terminated group insurance policy outside the forum state have sufficient minimum contacts with the forum to subject the bank to personal jurisdiction there? The faulty analysis of the Louisiana Court of Appeal, and that Court's affirmative answer to the question, are inconsistent with this Court's prior precedents and should be reviewed.

IV.

This Court Should Grant Review Because the Issue Is Important and Its Determination Will Substantially Affect Interstate Commerce.

This Court has always regarded as serious any state's attempt to exercise jurisdiction over non-residents, non-citizens, and others who have not purposefully established meaningful state contacts. The importance of the question raised by this application is manifest throughout the opinions of this Court cited in this Petition.

The questions raised in this Petition also have important implications for interstate commerce. If allowed to stand, the decision of the Louisiana Court of Appeal would effectively make every non-resident entity that contracts with a Louisiana resident subject to that state's jurisdiction. Thousands of commercial contracts are made with the state of Louisiana on a daily basis that

affect, directly or indirectly, a resident of Louisiana. This Court has repeatedly held that such effects, however, are insufficient in and of themselves to support personal jurisdiction. *See, e.g., Burger King*, 471 U.S. at 478-79, 105 S. Ct. at 2185.

In addition, the decision of the Louisiana Court of Appeal, if allowed to stand, will have a chilling effect upon interstate commerce. The decision tells non-residents that if they contract with a Louisiana resident, not knowing that the party is a Louisiana resident, the contract is all that is necessary to subject the non-resident to personal jurisdiction in Louisiana. It also tells them that attempts to limit their duties and responsibilities commensurate with the compensation they receive will be ineffective because a label or title such as insurer, franchisee or trustee is a sufficient basis to find personal jurisdiction over a non-resident. In Louisiana, the protections of the Fourteenth Amendment, as interpreted by the decisions of this Court, have been supplanted by a rule that is more easily applied. Constitutional safeguards have given way to judicial expediency. The result is predictable: fewer non-residents will contract with Louisiana residents, and interstate commerce will suffer.

CONCLUSION

Third National recognizes and appreciates Louisiana's interest in providing an avenue of redress for citizens who purchased insurance and whose claims remain unpaid. However, the Constitution continues to provide limits on the exercise of personal jurisdiction over non-residents. These limitations were not recognized

by the Louisiana Court of Appeal. This Court should grant this Petition to review its decision.

Respectfully submitted,

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The Supreme Court of the State of Louisiana

DOUGLAS D. GREEN,
COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA

VS. NO. 93-C -2463

GROUP PROGRAMS, INC.,
NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA., THIRD
NATIONAL BANK, LIBERTY
MUTUAL INSURANCE
COMPANY, PATRICK HUVAL,
DIASNNE [sic] V. FLORES,
THOMAS HUVAL, DALE F.
HUVAL, KATHRYN H. PONTIFF

IN RE: Third National Bank; – Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number CA92 1625; Parish of East Baton Rouge Nineteenth Judicial District Court Div. "L" Number 364,878

December 10, 1993

Denied.

PH

PFC

JLD

JCW

HTL

CDK

ROO

MARCUS, J., not on panel.

Supreme Court of Louisiana
December 10, 1993

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 92 CA 1625

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE V. FLORES, THOMAS HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, NUMBER 364,878, IN AND FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA, HONORABLE MICHAEL PONDER, JUDGE PRESIDING.

BEFORE: LOTTINGER, C.J., FOIL, AND FOGG, JJ.
FILED: July 2, 1993

LOTTINGER, CHIEF JUDGE.

This appeal is brought by the Insurance Commissioner for the State of Louisiana from a judgment dismissing a Tennessee bank from an insurance liquidation proceeding on grounds that the bank does not have sufficient minimum contacts with Louisiana to render the bank subject to the personal jurisdiction of Louisiana's courts.

FACTS

In 1984, a Louisiana resident, Patrick Huval, approached a Tennessee insurance broker, Gibbs Smith, for information about setting up a multiple employer insurance trust in Louisiana. Smith had previously set up such a trust with Third National Bank in Nashville (the Bank) as trustee, and approached the Bank to act as trustee for Huval's trust, the Summitt Insurance Plan Trust (the Trust). The Bank has no offices or employees in Louisiana, and otherwise conducts no business in this state.

Huval had his Louisiana insurance company, Group Programs, Inc., act as the administrator for the Trust, leaving the Bank with few duties other than to hold a group master insurance policy from which Group Programs' Louisiana customers would obtain coverage for health and other insurances. The Bank properly obtained such a policy from Durham Life Insurance Company (Durham), through Smith's efforts. The Trust was confected in 1985 by means of an Insurance Trust Agreement between the Bank and Group Programs, and a Master Administrative Agreement between Group Programs and Durham. Group Programs operated the Trust from its offices in Breaux Bridge, Louisiana.

In 1988, Durham allowed the policy to expire and declined to renew it. No other policy of insurance was obtained to replace the lapsed Durham policy. The Trust was now uninsured, and although the 1985 Insurance Trust Agreement provided that the Trust would immediately terminate if coverage lapsed unless new coverages could be obtained without gaps, Huval continued to

operate Group Programs and the Trust. Huval reengineered the Trust by entering into a second Master Administrative Agreement between Group Programs and the Trust, now standing in the place of Durham as its own insurer, in June of 1988. Marjorie Kirkpatrick, the Bank's employee, signed this agreement on behalf of the Trust.

In 1990, the scheme unraveled when the Trust was placed in liquidation by petition of the Insurance Commissioner. In its attempt to marshal the assets of the Trust, the Insurance Commissioner named the Bank as a defendant for breaching fiduciary duties owed under the trust agreement to trust beneficiaries: the Louisiana residents who were employees of the companies subscribing for insurance coverage under the trust plan.

The Bank resisted the suit on grounds that it is not subject to the personal jurisdiction of Louisiana courts under the long-arm statute, La. R.S. 13:3201. It succeeded by asserting via the declinatory exception raising the objection of lack of personal jurisdiction that it lacks sufficient minimum contacts with the state to satisfy the due process requirements of the Louisiana and United States constitutions.

ASSIGNMENT OF ERROR

In its appeal the Insurance Commissioner contends that the district court erred in dismissing the Bank for lack of personal jurisdiction and erred in finding that the Bank had not established minimum contacts with the State of Louisiana so as to subject it to Louisiana's long arm jurisdiction. La.R.S. 13:3201 *et seq.*

DISCUSSION

The Louisiana long-arm statute provides several bases for the assertion of jurisdiction over nonresidents, the broadest of which turns upon a finding of minimum contacts and fundamental fairness, the more specific enumerations being sufficient in and of themselves for the assertion of jurisdiction. *See* La.R.S. 13:3201, and the Comments thereunder. *See also Thompson v. Great Midwest Fur Company*, 395 So.2d 840, 842-843 (La. App. 1st Cir. 1981). The purpose of the long-arm statute is to extend personal jurisdiction of Louisiana courts over nonresidents to the full limits of due process, i.e., to any nonresident who has had minimal contacts in the state. *Thompson v. Great Midwest Fur Company*, 395 So.2d at 843. The section must be liberally interpreted in favor of finding jurisdiction. *Id.*

In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the nonresident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson*, 395 So.2d at 842.

The Bank knew at the inception of the trust that Huval and Group Programs were setting up business in Louisiana. The Bank further knew that it was receiving its trustee's fee as a result of the business activities of Huval

and Group Programs in Louisiana. The relative amount of this fee to the premiums paid by the subscribers is irrelevant.

Therefore, we reverse the trial court's erroneous findings that the bank did not have sufficient minimum contacts with the state to justify the extension of long-arm jurisdiction over it.

CONCLUSION

Therefore, for the above and foregoing reasons the judgment of the trial court is REVERSED and this case is REMANDED for further proceedings. REVERSED AND REMANDED.

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 92/CA/1625

DOUGLAS D. GREEN,
COMMISSIONER OF INSURANCE,
STATE OF LOUISIANA

Parish of East Baton Rouge

--VERSUS--

GROUP PROGRAMS, INC., ET AL

On Application for Rehearing,

Rehearing DENIED

/s/ Morris A. Lottinger, Jr.
Morris A. LOTTINGER, JR.

/s/ Frank Foil
FRANK FOIL

/s/ Kenneth J. Fogg
KENNETH J. FOGG

Filed AUG 19 1993

/s/ Stanley P. Lemoine
STANLEY P. LEMOINE, Clerk

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

Post Office Box 4408

Baton Rouge, Louisiana 70821-4408

Docket Number: 92/CA/1625 DATE: AUG 19 1993

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE, STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., ET AL

CERTIFICATE OF MAILING

I hereby certify that a copy of the attached was mailed to all counsel of record, and all parties not represented by counsel this date as listed below.

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STANLEY P. LEMOINE,
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FIRST CIRCUIT

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DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
GROUP PROGRAMS INC., ET AL	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

(Filed Sept. 11, 1992)

This matter came on for hearing on January 31, 1992, on exception of lack of personal jurisdiction filed by defendant Third National Bank. Oral argument was held and the Court sustained the exception.

Plaintiff filed an application for new trial which was granted. At the hearing on May 22, 1992, the original judgment sustaining the exception was vacated in so far as the judgment dismissed the claims of plaintiff against Third National Bank with prejudice without reserving plaintiff's rights against the Bank in an appropriate forum. However, the exception of lack of jurisdiction was again sustained.

To briefly summarize the background of this litigation, the Commissioner of Insurance, as liquidator of Summit Insurance Plan Trust (hereinafter referred to as the Trust), filed suit against a number of defendants for operating the Trust while it was not insured. Plaintiff alleges that in March of 1985, defendant Patrick Huval incorporated defendant Group Programs, Inc., to administer a trust to provide health care insurance to employees of small businesses. That corporation then entered into an

"Insurance Trust Agreement" with exceptor Third National Bank of Tennessee and established the Trust. Third National Bank obtained a group insurance policy for members of the Trust from defendant Durham Life Insurance Company (hereinafter "Durham"). On April 1, 1985, Durham and Group Programs entered into a "Master Administrative Agreement." In May of 1988, Durham allegedly terminated the agreement and notified Group programs and Mr. Huval that it would no longer provide insurance for the Trust. Plaintiff contends that the Trust continued to operate without insurance. Third National Bank resigned as trustee on February 21, 1992.

At the original hearing on the exception, the parties stipulated to the use of affidavits in lieu of live witnesses. The affidavits and exhibits submitted in this matter reveal the following facts relating to the contacts Third National Bank has or may have had with the state of Louisiana.

Third National Bank has its place of business in Tennessee; no branch offices are located in this state. The Bank does not regularly transact business in Louisiana, nor does it contract to supply goods [or] services here.

The Trust was established through the initiative of a Louisiana citizen, Patrick Huval, who contacted Gibbs Smith, a resident of Tennessee. Mr. Smith had previously set up the type of multi-employer insurance trust Huval was interested in creating.

Third National Bank had been the trustee on the previous trust established by Mr. Smith and apparently, for that reason alone was contacted by Smith about performing the same function for Huval's trust. Mr. Smith testified that Third National Bank did not solicit the

business. Mr. Huval testified that Mr. Smith had to contact the bank regarding the trust agreement and that he, Huval, never met with anyone from the Bank. All instruments relating to Third National Bank were executed in Tennessee.

Pursuant to the trust agreement, Third National Bank had the duties of obtaining and holding a master policy, which it secured form Durham, a North Carolina company. The Bank had no administrative or collection duties. In return for performing its duties, Third National Bank received $500.00 a year. The Court considers this to be a minimal amount of compensation in light of the alleged millions of dollars in premiums being received by Group Programs.

Third National Bank had no control, knowledge, or ownership privileges in any trust funds held in Louisiana banks.

The Bank was not notified of Durham's termination of the master policy.

Pursuant to La. R.S. 13:3201 B, a Louisiana court may exercise personal jurisdiction over a nonresident on any basis consistent with the Louisiana and U.S. Constitutions. Under a constitutional analysis, the first inquiry is whether the nonresident has purposefully established contacts or relationships with the forum state. If so, the quality and nature of the contacts and the relationship among the nonresident, the forum, and the litigation must be examined in order to determine whether it

would be reasonable for the forum to exercise jurisdiction.[1]

The foregoing facts do not establish the existence of any contacts with this state resulting from the purposeful conduct of Third National Bank. The proper focus is on actions taken by Third National Bank, not the activities of the Trust, Group Programs, Inc., or Mr. Huval. There is no showing that the Bank had any administrative duties to perform in this state. The Bank had no control over any trust assets in this state, nor did it participate in the solicitation of business in this state for the Trust or otherwise. The evidence before the Court indicates that the Bank was selected to serve a nominal role in the Trust; this selection was made solely because the Bank had served in the same capacity for another trust established by Mr. Smith in Tennessee. For this service, the Bank received minimal compensation.

Since the threshold requirement of minimum contacts has not been established, it is not necessary for the Court to address whether the exercise of its jurisdiction over the Bank would result in fair play and substantial justice.

The plaintiff failed to raise any additional substantive arguments at the new trial on the exception. The case of *Brown v. Flowers Industries*[2] was cited by plaintiff for the proposition that a single phone call to the forum state establishes minimum contacts with that state. However, the Court finds the *Brown* case is distinguishable in that

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[1] *Superior Supply v. Assoc. Pipe and Supply*, 515 So.2d 790, 796 (La. 1987).

[2] 688 F.2nd 328 (5th Cir. 1982).

the phone call found to constitute "minimum contacts" was alleged to be the intentional tort on which the suit was based.

Three recent cases were cited by the plaintiff; all of which the Court finds distinguishable from the instant factual situation. In each case, the trial court's finding of lack of personal jurisdiction was reversed on appeal. *E & L Lumber v. Ashy Corp,*[3] involved a nonresident corporation that had initiated contact with a forum business and continued the relationship by ordering over the phone numerous times for several years. In *Maltezos v. F.W. Woolworth*[4], the nonresident defendant admitted it conducted business in Louisiana but argued that it would be unduly burdensome to litigate in this state. In *Babcock & Wilcox Company v. Babcock Mexico, S.A. de C.V.*[5], the Fourth Circuit emphasized that the nonresident had met in Louisiana concerning the transaction at issue and had made numerous phone calls and mailings to this date in connection with the transaction.

Accordingly, the exception of lack of personal jurisdiction is sustained and plaintiff's claims against Third National Bank are dismissed, reserving plaintiff's rights against the Bank in an appropriate forum.

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[3] 594 So.2nd 948 (3rd Cir. 1992).

[4] No. 91-CA-1581, Court of Appeal, Fourth Circuit (April 1, 1992). This opinion had not been released for publication.

[5] No. 91-CA-1694, Court of Appeal, Fourth Circuit (April 1, 1992). This opinion had not been released for publication.

Baton Rouge, Louisiana, this 11th day of September, 1992.

/s/ Michael E. Ponder
Michael E. Ponder, Judge

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
CIVIL DIVISION "D"

DOUGLAS D. GREEN, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA
VERSUS NUMBER 364,878
GROUP PROGRAMS, INC., ET AL

TRANSCRIPT OF HEARING
EXCEPTION OF LACK OF PERSONAL JURISDICTION
FRIDAY, JANUARY 31, 1992
THE HONORABLE MICHAEL E. PONDER
JUDGE PRESIDING

APPEARANCES:

RONNIE SHARKEY, ESQUIRE FOR PLAINTIFF
J.E. MCELLIOGOTT, JR., ESQUIRE;
MICHAEL JUNEAU, ESQUIRE;
GERALDINE FONTENOT, ESQUIRE;
TOM KANADAY, ESQUIRE; AND
JULIE SCHWARTZ; ESQUIRE FOR DEFENDANTS

REPORTED BY:
MARIE L. LUTHER
OFFICIAL COURT REPORTER

FILED: MAY 8, 1992
/s/ Marie L. Luther
DEPUTY CLERK
OF COURT

A TRUE COPY
/s/ Marie L. Luther
DY. CLERK OF COURT

ORAL REASONS FOR JUDGMENT

BY THE COURT:

THE THRUST OF THE PLAINTIFF'S ARGUMENT IN FAVOR OF THE JURISDICTION OF THIS COURT, THE PERSONAL JURISDICTION OVER THIRD NATIONAL BANK, WAS THE INTEGRAL INVOLVEMENT THAT THEY HAVE INSOFAR AS OPERATION OF SUMMIT INSURANCE TRUST PLAN HERE IN THIS STATE.

PLAINTIFF'S ARGUMENTS REVOLVE AROUND THE ALLEGED ACTIVITIES OF GROUP PROGRAMS AND MR. HUVAL IN THIS STATE. HOWEVER, THE PROPER FOCUS IS ON THE CONNECTION BETWEEN LOUISIANA AND THIRD NATIONAL BANK THEMSELVES. IN THAT REGARD, THE EXHIBITS AND THE AFFIDAVITS THAT I HAVE EXAMINED, THAT WERE PRODUCED AND STIPULATED TO BY THE PARTIES IN LIEU OF ANY LIVE TESTIMONY HERE IN COURT, SHOW THE FOLLOWING: FIRST OF ALL, THE THIRD NATIONAL BANK HAS ITS PLACE OF BUSINESS IN TENNESSEE, AND THERE IS APPARENTLY NO QUESTION THAT IT DOES NOT HAVE A BRANCH OFFICE IN THIS STATE OR ANY OTHER FORM OF DIRECT OPERATION WITH THE STATE, NOR DOES THE PLAINTIFF ARGUE THAT IT REGULARLY TRANSACTS BUSINESS IN LOUISIANA OR CONTRACTS TO SUPPLY GOODS OR SERVICES HERE OTHER THAN THIS UNIQUE CIRCUMSTANCE SURROUNDING THIS PARTICULAR CASE.

SECONDLY, THE TRUST WAS SET UP THROUGH THE INITIATIVE OF A LOUISIANA CITIZEN, MR. HUVAL, APPARENTLY, WHO CONTACTED MR. SMITH, WHO HAPPENED TO BE A RESIDENT OF TENNESSEE, AND HAD PREVIOUSLY SET UP A TYPE OF MULTIPLE EMPLOYER AND INSURANCE TRUST THAT MR. HUVAL WAS INTERESTED IN AND HAD KNOWLEDGE OF AND DEALINGS WITH THAT, AND IT JUST SO HAPPENED THAT IT WAS WITH THIRD NATIONAL BANK.

THIRDLY, THE THIRD NATIONAL BANK BY CHANCE WAS THE TRUSTEE FOR MR. SMITH'S PLAN AND HAD, APPARENTLY FOR THAT REASON ALONE, BEEN CONTACTED BY MR. SMITH ABOUT PERFORMING THE SAME FUNCTION AS REQUESTED IN THIS PARTICULAR CASE. MR. SMITH TESTIFIED THAT THE THIRD NATIONAL BANK DID NOT SOLICIT THE BUSINESS, THAT MR. HUVAL, THE INCORPORATOR, TESTIFIED THAT MR. SMITH HAD TO CONTACT THE BANK REGARDING THE TRUST AGREEMENT, AND THAT HE, MR. HUVAL, NEVER MET WITH ANYONE FROM THE BANK ITSELF.

FOURTH, THAT UNDER THE TRUST AGREEMENT WITH GROUP PROGRAMS, THIRD NATIONAL BANK HAD THE DUTY OF OBTAINING A MASTER POLICY, WHICH IT DID, FROM A NORTH CAROLINA COMPANY. IN KEEPING WITH THAT POLICY, IT HAD NO ADMINISTRATIVE OR COLLECTION DUTIES. IN RETURN FOR PERFORMING THIS FUNCTION, THE BANK RECEIVED ONLY FIVE HUNDRED DOLLARS AS ITS FEE FOR ADMINISTERING THIS TRUST. THE AMOUNT OF THE COMPENSATION ALLEGED IS IN

THE MILLIONS OF DOLLARS IN PREMIUMS THAT ARE AT ISSUE HERE. THAT WAS VERY IMPORTANT IN MY MIND. IT WAS A MINIMAL TYPE OF FEE THAT WAS CHARGED AND AN ADMINISTRATIVE TYPE OF FEE.

FIFTH, AND FINALLY, THAT THIRD NATIONAL BANK HAD NO CONTROL, KNOWLEDGE, OR OWNERSHIP OF PRIVILEGES IN ANY FUNDS HELD IN LOUISIANA BANKS. THE AFFIDAVIT INDICATED THAT IT WAS UNAWARE OF SUCH HOLDINGS AND IT WAS NOT NOTIFIED OF DURHAM'S TERMINATION OF THE ORIGINAL POLICY, AND I'M CONVINCED OF THAT FACT. THE BANK DID NOT KNOW THAT. THE FACTS DO NOT ESTABLISH THAT THIRD NATIONAL BANK HAS THE REQUISITE MINIMUM CONTACTS FOR A LOUISIANA COURT TO EXERCISE PERSONAL JURISDICTION OVER IT, NOR DID THEY REVEAL ANY PURPOSEFUL SYSTEMATIC OR CONTINUOUS COURSE OF CONDUCT IN THIS PARTICULAR STATE. THIRD NATIONAL BANK HAD NO ADMINISTRATIVE DUTIES TO PERFORM HERE NOR DID IT HAVE CONTROL OVER ANY FUNDS LOCATED IN THIS STATE. NO SOLICITATION ON BEHALF OF THIRD NATIONAL BANK IS SHOWN TO HAVE TAKEN PLACE REGARDING THE TRUST. THERE IS NO EVIDENCE OF THIRD NATIONAL HAVING UNDERTAKEN SOME ACT TO PURPOSEFULLY AVAIL ITSELF OF THE PRIVILEGE OF CONDUCTING ACTIVITIES WITHIN THIS STATE. THE HANSON AND STALLWORTH CASES EMPHASIZED THAT NO TRUST ASSETS WERE HELD OR ADMINISTERED IN THE FORUM STATE, AND THAT WAS IMPORTANT IN THIS CASE. THE SAME RATIONALE

APPLIES HERE BECAUSE IT IS CLEAR THAT THIRD NATIONAL BANK DID NOT AND COULD NOT HAVE ADMINISTERED ANY FUNDS OR PREMIUMS IN LOUISIANA BANKS AS THEIR COLLECTION OF FUNDS WAS THE OBLIGATION OF GROUP PROGRAMS UNDER THE TERMS OF THE INSURANCE AGREEMENT.

I APPRECIATE, MR. SHARKEY, YOUR EMPASSIONED [sic] PLEA INSOFAR AS THE LOSSES OF MILLIONS OF DOLLARS WITH REGARD TO LOUISIANA CITIZENS AND I SYMPATHIZE, BUT I CAN'T EXTEND THE JURISDICTION OF THIS STATE WITH LACK OF MINIMUM CONTACTS BECAUSE OF THAT PURPOSE. I UNDERSTAND THAT YOU ARE WANTING TO GET THIRD NATIONAL BANK BECAUSE, OBVIOUSLY, THEY ARE ONE OF THE FEW, IF ANY, PARTIES THAT ARE LEFT IN THIS MATTER THAT MAY BE SOLVENT AND ABLE TO DO THAT, BUT MINIMUM CONTACTS ARE NOT PRESENT IN THIS PARTICULAR CASE. THEREFORE, THE EXCEPTION OF LACK OF JURISDICTION IS HEREBY MAINTAINED. JUDGMENT IS RENDERED AND WILL BE SIGNED ACCORDINGLY.

CERTIFICATE

I, MARIE L. LUTHER, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF THE FOREGOING MATTER TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 8TH DAY OF MAY, 1992.

/s/ Marie L. Luther
MARIE L. LUTHER, C.S.R.
OFFICIAL COURT REPORTER
NINETEENTH JUDICIAL
DISTRICT COURT

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

PETITION

NOW INTO COURT, through undersigned counsel, comes and appears Douglas D. Green, Commissioner of Insurance of the State of Louisiana, in his capacity as Liquidator of Summit Insurance Plan Trust, who respectfully represents:

1

Named as defendants herein are the following:

(a) Group Programs, Inc., a Louisiana corporation authorized to do and doing business in the State of Louisiana;

(b) National Union Fire Insurance Company of Pittsburgh, PA, a foreign insurance company authorized to do and doing business in the State of Louisiana;

(c) Third National Bank, a national banking association with its principal offices in Nashville, Tennessee;

(d) Liberty Mutual Insurance Company, a foreign insurance company authorized to do and doing business in the State of Louisiana;

(e) Patrick Huval, a person of the full age of majority and resident of the State of Louisiana;

(f) Dianne B. Flores, a person of the full age of majority and resident of the State of Louisiana;

(g) Thomas K. Huval, a person of the full age of majority and resident of the State of Louisiana;

(h) Dale F. Huval, a person of the full age of majority and resident of the State of Louisiana; and

(i) Kathryn H. Pontiff, a person of the full age of majority and resident of the State of Louisiana.

2.

The defendants are liable in solido for the following, to-wit:

3.

On or about March 7, 1985, Group Programs, Inc. was incorporated by Patrick Huval.

4.

On or about March 8, 1985, Group Programs, Inc., acting through Patrick Huval, authorized representative, entered into an "Insurance Trust Agreement" with Third National Bank, in Nashville, and established a trust, said trust identified as the Summit Insurance Plan Trust.

5.

Under the terms of the Insurance Trust Agreement, Third National Bank in Nashville, acting as Trustee of Summit Insurance Plan Trust, was to obtain a policy and/or policies of group insurance for all forms of group life, health, accident, and disability insurance, to provide coverage to any members of the Summit Insurance Plan Trust.

6.

Pursuant to the Insurance Trust Agreement, Third National Bank, acting through Group Programs, Inc., obtained insurance from Durham Life Insurance of Raleigh, North Carolina (hereafter "Durham") for the Summit Insurance Plan Trust. The insurance provided by Durham provided for full group coverage for all health and accident claims.

7.

Durham and Group Programs, Inc. entered into an Agreement effective April 1, 1985, said agreement identified as the "Master Administrative Agreement". The Master Administrative Agreement provided that Group Programs, Inc. would receive a fee for administering the Summit Insurance Plan Trust.

8.

Subsequent to April 1, 1985, Group Programs, Inc. and Patrick Huval began to solicit employers (and their employees) to become members of the Summit Insurance Plan Trust. Group Programs, Inc. collected premiums, administered the billing and payment of claims. The participants in the Summit Insurance Plan Trust were fully insured through Durham.

9.

Premiums were paid by participants in the Summit Insurance Plan Trust. Upon information and belief, commissions were paid to agents of the Huval Insurance Group out of premiums collected from the sale of group insurance to participants (employer/employee members) of the Summit Insurance Plan Trust. For purposes of this petition, the term the "Huval Insurance Group" includes the following corporations: Huval Insurance Agency, Inc.; Huval Insurance Agency of Aranaudville, Inc., Huval Insurance Agency of New Iberia, Inc.; Huval Insurance Agency of Abbeville, Inc.; Huval Insurance Agency of Loreauville, Inc : Inc.; [sic] Huval Insurance Agency of Opelousas, Inc.; and Huval Insurance Agency of Aranaudville, Inc.

10.

During the spring of 1988, Durham notified Patrick Huval and Group Programs, Inc. that it was going to terminate the Master Administrative Agreement with Group Programs, Inc.,and it was going to cease providing any group insurance to Summit Insurance Plan. Durham did cease providing insurance and the 1985 Master

Administrative Agreement was terminated effective June 1, 1988.

11.

During the period of time from April 1, 1985 through June 1, 1988, Durham fully insured any and all employer and/or employee members of the Summit Insurance Plan Trust, and paid the life and health claims for the members of the Trust.

12.

During May, 1988, Summit Insurance Plan Trust, through Third National Bank in Nashville, as Trustee of the Trust, and Group Programs, Inc., through its authorized representative, Patrick Huval, entered into a Master Administrative Agreement. Subsequently, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Group Programs, Inc., and Third National Bank in Nashville, as Trustee of the Summit Insurance Plan Trust, continued to operate the Summit Insurance Plan Trust.

13.

Upon information and belief, agents of the Huval Insurance Group continued to sell the Summit Insurance Plan Trust to participants.

14.

Under the Master Administrative Agreement, Group Programs, Inc. received an administrative fee. Upon information and belief, commissions were paid to Patrick Huval, Thomas Huval, Dale Huval, the "Huval Insurance Group", and/or to agents of the Huval Insurance Group

out of the premiums collected from the participants (employer/employee members) of the Summit Insurance Plan Trust.

15.

Subsequent to May, 1988, Group Programs, Inc. continued to solicit employers and their employees to become members of the Summit Insurance Plan Trust, collected premiums, paid itself an administrative fee, paid commissions, and administered the payment of claims of the Summit Insurance Plan Trust. Subsequent to May, 1988, Patrick Huval, Dale F. Huval, Thomas Huval, Dwayne Pontiff, the Huval Insurance Group and/or agents of the Huval Insurance Group continued to solicit employers and their employees to become members of the Summit Insurance Plan Trust.

16.

At all times relevant, Patrick Huval was officer (Vice-President), manager, and a director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in the Summit Insurance Plan Trust, including but not limited to soliciting participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

17.

At all times relevant hereto, Dianne B. Flores was an officer (president) and/or director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in the Summit Insurance Plan Trust, including but not limited to soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

18.

At all times relevant hereto, Thomas Huval was an officer (secretary) and a director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in Summit Insurance Plan Trust including, but not limited to, making decisions regarding the Summit Insurance Plan Trust, soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding the Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

19.

At all times relevant hereto, Kathryn H. Pontiff was the assistant office manager and was a director of Group Programs, Inc. and personally conducted and/or directed communications, negotiations, and/or made decisions affecting the status of Summit Insurance Plan Trust and its participants, including, but not limited to, soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of Summit Insurance Plan Trust.

20.

At all times relevant hereto, Dale F. Huval was a director of Group Programs, Inc. and provided services to Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of Summit Insurance Plan Trust and/or the participants in the Summit Insurance Plan Trust, including, but not limited to soliciting and/or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of Summit Insurance Plan Trust.

21.

Dianne B. Flores, Patrick Huval, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff were directors of Group Programs, Inc. and were the principals in charge of Group Programs, Inc. and continued operating the Trust and made decisions regarding the continued operation of the Trust, the receipt of payments from participants in the Trust, the payment of claims, the payment of commissions, the payment of the administrative fee, and/or matters concerning the operation of the Trust.

22.

The Summit Insurance Plan Trust continued to expand and sell insurance to additional participants (employers and employees) subsequent to May, 1988.

23.

Subsequent to May, 1988, Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores, reviewed and/or revised documents, made decisions and/or supervised decisions regarding any and all advertising materials, forms, circulars, pamphlets, and other materials disseminated for the purposes of soliciting employers and employees to become members of the Summit Insurance Plan Trust and/or to continue as members of the Trust and/or knew or should have known of decisions regarding the content (and/or lack of content) of any materials disseminated.

24.

By letter dated February 21, 1990, Robert G. Mayer, Vice President of Third National Bank, wrote Patrick

Huval, Groups Programs, Inc., notifying him that in accordance with Item 5 of the Trust Agreement dated March 8, 1985, Third National Bank was resigning as Trustee of the Summit Insurance Plan Trust, to be effective thirty (30) days from the date of the letter.

25.

Third National Bank, Group Programs, Inc., Patrick Huval, Thomas Huval, Dale Huval, Kathryn Pontiff, and Dianne B. Flores breached their duty to the Summit Insurance Plan Trust and its individual members by failing to terminate the Summit Insurance Plan Trust and/or failing to require that the Summit Insurance Plan Trust be terminated and/or continuing to operate the Trust subsequent to May, 1988.

26.

Subsequent to May, 1988, the Summit Insurance Plan Trust was never fully insured by any group master insurance policy. Subsequent to May, 1988, health insurance coverage was only partially provided by several insurers, said policies generally providing employee medical hospitalization benefits specific excess insurance coverage, and/or employee medical hospitalization benefit aggregate excess insurance coverage.

27.

On information and belief, Patrick Huval, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff are shareholders, directors, and/or officers of one or more of the companies (agencies) comprising the "Huval Insurance Group". The Huval Insurance Group continued to solicit participants and/or solicit continued participation (by

employers and employees) in the Summit Insurance Plan and/or contributed to the solicitation of participants in the Summit Insurance Plan Trust.

28.

Group Programs, Inc., Third National Bank, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff, are liable in solido in the following non-exclusive particulars:

(a) Breach of contract;

(b) Breach of fiduciary duty;

(c) Breach of duty;

(d) Errors, acts, and/or omissions in managing and/or supervising the Summit Insurance Plan Trust;

(e) Failing to secure and obtain an insurer and/or insurers to provide fully insured health insurance for members of the Summit Insurance Plan Trust;

(f) Causing or allowing the use of incomplete, incorrect, and/or misleading information to be distributed regarding the Summit Insurance Plan Trust;

(g) Omitting or failing to require that sufficient, correct, and/or non-misleading information be distributed regarding the Summit Insurance Plan Trust;

(h) Negligence and breach of duty in failing to provide a solvent and fully insured health plan for employers and employee members of the Summit Insurance Plan Trust;

(i) Causing or allowing the Summit Insurance Plan Trust to operate subsequent to the cancellation of group insurance by Durham;

(j) Failing to exercise the degree of care that should have been exercised by a third party administrator and by a trustee of the Insurance Plan Trust.

(k) Causing or allowing the payment of commissions to entities controlled by principals of Group Programs, Inc. and/or causing or allowing the payment of excessive commissions;

(l) Causing or allowing loans to be made from the Summit Insurance Plan trust;

(m) Omitting or failing to properly supervise the receipt and distribution of funds to and from the Summit Insurance Plan Trust;

(n) Causing or allowing the co-mingling of funds with Trust funds;

(o) Failing to maintain the Summit Insurance Plan Trust pursuant to the Trust Agreement;

(p) Causing or allowing employers and their employees to become members of the Summit Insurance Plan Trust in states where the Summit Insurance Plan Trust was not properly authorized to sell insurance;

(q) Failing to act in the best interest of the participants of the Summit Insurance Plan Trust;

(r) Failing to take steps to remedy any breaches of duty and/or breach of contract;

(s) Causing and/or allowing the Summit Insurance Plan Trust to operate and/or solicit participants and/or causing or allowing continued participation in the Trust when it was known or should have been known that the Trust was not paying claims and/or was not able to pay claims and/or was not fully insured;

(t) Causing or allowing groups to become members of the Summit Insurance Plan Trust when they knew or should have known that the addition of such groups was not in the best interest of the Trust;

(u) Causing or allowing solicitation of participants in the Trust and/or continued participation (of employers and employees) in the Trust when the Trust was not fully insured and/or after the Trust should have been terminated;

(v) Causing or allowing sums to be received from participants (employers and/or employees) for the purposes of acquiring or maintaining full health insurance coverage;

(w) Causing or allowing Group Programs, Inc. to obtain a fixed billing fee in addition to any administrative fee obtained, and

(x) Failing to provide the Trust with trained professionals to analyze the risks assumed by it and to professionally administrate the program.

29.

Participants in the Summit Insurance Plan Trust have incurred medical expenses which have not been reimbursed. Defendants failed to act solely in the best interest

of the participants and beneficiaries of the Plan, with the care, skill, prudence, and diligence required and defendants failed to provide and/or omitted material information regarding the insurance coverage in effect, the stability of the Summit Insurance Plan Trust, and/or the rating of any insurer providing coverage.

30.

As a result of the errors, acts, breaches, and/or omissions of Group Programs, Inc., Third National Bank, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff, the Summit Insurance Plan Trust and/or participants and/or beneficiaries of the Summit Insurance Plan Trust have incurred significant losses, which losses include, but are not limited to, unpaid health and/or life insurance claims of employers and/or employee participants in the Summit Insurance Plan Trust.

31.

National Union issued a policy of insurance which was in full force and effect and afforded coverage for the errors, actions, breaches, and/or omissions of Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores.

32.

Upon information and belief, Liberty Mutual Insurance Company issued a policy of insurance to Third National Bank which was in full force and effect and afforded coverage for any and all losses which resulted.

WHEREFORE, Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as

Liquidator of the Summit Insurance Plan Trust, prays that, after all due proceedings had, there be judgment in favor of Douglas D. Green, Commissioner of Insurance in his capacity as Liquidator of the Summit Insurance Plan Trust and against the defendants, Group Programs, Inc., Third National Bank, Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Dianne B. Flores, National Union Fire Insurance Company of Pittsburgh, PA, and Liberty Mutual Insurance Company, in solido, for any and all sums, losses, damages, expenses, and costs which are reasonable in the premises and for interest thereon from the date of the judicial demand. Petitioner further prays for all just, equitable, and statutory relief.

Respectfully submitted:

RUBIN, CURRY, COLVIN & JOSEPH
A Professional Law Corporation

/s/ Bernard J. Sharkey, Jr.
Richard A. Curry,
Bar Roll No. 4671
Barnard J. Sharkey, Jr.,
Bar Roll No. 1592
Ninth Floor, One American Place
Baton Rouge, Louisiana 70825
Telephone: 504/383-9000

Attorneys for Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as Liquidator of the Summit Insurance Plan Trust

SERVICE INFORMATION

Please serve:

Group Programs, Inc.
through its agent for service of process:
Patrick Huval
Route 1, Box 1302
St. Martinville, Louisiana 70582

Patrick Huval
Route 1, Box 1302
St. Martinville, Louisiana 70582

Dianne B. Flores
(please hold service at this time)

Thomas K. Huval
524 Claude Street
Breaux Bridge, Louisiana

Dale F. Huval
Route 1, Box 711
Breaux Bridge, Louisiana

Kathryn H. Pontiff
(please hold service at this time)

National Union Fire Insurance Company
of Pittsburgh, PA
through its agent for service of process:
Walter "Fox" McKeithen
Secretary of State
State of Louisiana
3851 Essen Lane
Baton Rouge, Louisiana 70809

Liberty Mutual Insurance Company
through its agent for service of process:
Walter "Fox" McKeithen
Secretary of State
State of Louisiana
3851 Essen Lane
Baton Rouge, Louisiana 70809

Third National Bank
201 Fourth Avenue North
Nashville, Tennessee 37219

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

FIRST SUPPLEMENTAL AND AMENDED PETITION

NOW INTO COURT, through undersigned counsel, comes and appears Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust, who supplements and amends the original petition filed in this matter by adding the following paragraphs and respectfully represents:

A.

Plaintiff, Commissioner of Insurance for the State of Louisiana, supplements and adds the following paragraphs to its original petition:

33.

National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") issued one or more policies of insurance which were in full force and effect, which policy and/or policies would provide coverage for the breach of duty, neglect, error, actions, conduct, breaches and/or omissions of Third National Bank in Nashville and would provide coverage against the losses and damages of the nature described herein and herein sued upon, and by virtue of said policy and/or policies, National Union Fire Insurance Company of Pittsburgh, Pa. is liable, in solido, unto your petititoner.

34.

National Union issued a policy and/or policies of insurance which were in full force and effect and which afforded coverage for the breach of duty, breaches, neglect, errors, actions, omissions, and/or conduct of Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores and which provided coverage for the damages and losses of the nature herein sued upon and by nature of said policy and/or policies National Union is liable, in solido, unto your petitioner.

35.

The paragraphs of the original petition are adopted, incorporated, and are reiterated herein as if repeated in extenso.

WHEREFORE, Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust prays that

he be granted leave of court for the filing of the First Supplemental and Amended Petition.

Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust further prays that after all due proceedings had, there be judgment in favor of Douglas D. Green, Commissioner of Insurance for the State of Louisiana in his capacity as liquidator of the Summit Insurance Plan Trust and against the defendants, Group Programs, Inc., Third National Bank in Nashville, Patrick E. Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Dianne B. Flores, National Union Fire Insurance Company of Pittsburgh, Pa., and Liberty Mutual Insurance company, in solido, for any and all sums, losses, damages, expenses, and costs which are reasonable in the premises and interest on all sums thereon from the date of judicial demand. Petitioner further prays for all just, equitable, and/or statutory relief.

Respectfully submitted:

RUBIN, CURRY, COLVIN
& JOSEPH
A Professional Law Corporation

/s/ Bernard J. Sharkey, Jr.
Richard A. Curry
Bar Roll No. 4671
Bernard J. Sharkey, Jr.
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Ninth Floor,
One American Place
Baton Rouge, Louisiana 70825
Telephone: 504/383-9000

Attorneys for
Douglas D. Green,
Commissioner of Insurance
for the State of Louisiana

SERVICE INFORMATION:

Please serve:

National Union Fire Insurance Company
of Pittsburgh, Pa.
through its attorney of record:
Michael Juneau
Juneau, Judice, Hill & Adley
926 Coolidge Boulevard
Lafayette, Louisiana 70503-2434

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

ORDER

IT IS ORDERED that the foregoing First Supplemental and Amended Petition be allowed and filed in the record of these proceedings according to law.

Baton Rouge, Louisiana, this ___ day of June, 1991.

JUDGE, 19TH JUDICIAL
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff, v. GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	)	Civil Action No. 91-208 Section: A Judge John V. Parker

THIRD NATIONAL BANK IN NASHVILLE'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Third National Bank in Nashville ("TNB") respectfully moves this Court to dismiss TNB from this case pursuant to Rules 12(b)(2) and 12(b)(4) of the Federal Rules of Civil Procedure. TNB will show that it lacks the requisite minimum contacts with Louisiana that would provide this Court with a basis for personal jurisdiction over TNB. In addition, TNB will show that the Citation served upon it did not comply with applicable Louisiana

law to be valid, and that TNB is therefore not properly a party to this lawsuit. In support of this motion, TNB relies upon a contemporaneously filed memorandum of law, the affidavits of Gibbs Smith and Richard Fitzgerald, and excerpts from the deposition of Patrick Huval, all of which are attached as exhibits to this motion. [Exhibits not attached.] TNB requests an order of this Court dismissing it from this action.

Respectfully submitted,

/s/ Thomas P. Kanaday, Jr.
Thomas P. Kanaday, Jr.

FARRIS, WARFIELD
& KANADAY
Nineteenth Floor
424 Church Street
Nashville, Tennessee 37219
(615) 244-5200

/s/ Julie E. Schwartz
Julie E. Schwartz

LISKOW & LEWIS
One Shell Square, 50th Floor
New Orleans, Louisiana 70139-5001
(504) 581-7979

Attorneys for Defendant
Third National Bank
in Nashville

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was sent by first class mail, postage prepaid, to Richard A. Curry, Attorney for Plaintiff, RUBIN, CURRY, COLVIN & JOSEPH, 1400 One American Place, Baton Rouge, Louisiana 70825; John E. McElligott, Jr., Attorney for Group Programs, Inc., Patrick Huval, Dianne B. Flores, Dale F. Huval, and Kathryn Pontiff, DAVIDSON, MEAUX, SONNIER, McELLIGOTT & SWIFT, Post Office Drawer 2908, 810 South Buchanan Street, Lafayette, Louisiana 70502-2908; Michael J. Juneau, Attorney for National Union Fire Insurance Company of Pittsburgh, Pennsylvania, JUNEAU, JUDICE, HILL, & ADLEY, 926 Coolidge Boulevard, Lafayette, Louisiana 70503-2434; and Charles A. Schutte, Jr., Attorney for Liberty Mutual Insurance Company, MATHEWS, ATKINSON, GUGLIELMO, MARKS & DAY, 320 Somerulos Street, Post Office Box 3177, Baton Rouge, Louisiana 70821-3177, on the 7th day of March, 1991.

/s/ Julie E. Schwartz
Julie E. Schwartz

INSURANCE TRUST AGREEMENT

This Trust Agreement is made and entered into this 8 day of March, 1985 by and between Group Programs, Inc., as Grantor, ("Grantor") and Third National Bank in Nashville, a National Banking Association with its principal offices in Nashville, Tennessee as Trustee ("Trustee").

For and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the parties hereto agree as follows:

1. *Recitals.* Grantor desires to establish a Trust for the purpose of holding one or more group master insurance policies issued by one or more insurance companies for the purpose of providing insurance benefits to various employees of participating employers (Participating Employers) and their covered dependents who accept in writing the terms of this Trust Agreement and agree to be bound by it. Grantor intends to act as Administrator and agrees to accept the responsibility for all administrative duties required in connection with any such group master policy conditions hereinafter set forth.

2. *Establishment of Trust.* The Trustee declares that it will receive and hold, as Trustee, the group master insurance policy or policies described herein, and that it will administer the Trust on the terms and conditions hereinafter set out. This Trust shall be known as the:

Summitt Insurance Plan Trust ("Trust").

3. Duties of Trustee.

A. The Trustee, acting through the Grantor, shall make application to an insurance company or companies, duly authorized to conduct the business of insurance in the State of Tennessee, and other states in which Participating Employers are located, for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability insurance, to be issued to the Trustee, providing such benefits for Participants or their covered dependents as the Grantor, acting in its capacity as Administrator shall determine from time to time, in its sole discretion. Such policy or policies may contain such provisions and be subject to such limitations and conditions as Administrator as agreed upon with the Insurance Company shall determine from time to time, in its sole discretion.

B. The Trustee shall hold such policy or policies of group insurance and safely keep same and shall execute such documents as may require its signature as owner of such policy or policies for the purpose of obtaining and maintaining the policy or policies in force, or for any other purpose required of the owner of such group master policy or policies.

C. The Trustee shall act at the direction of Administrator in taking any and all actions regarding the termination, modification or replacement of any policy held hereunder and may delegate to Administrator the authority to act on its behalf in regard to any such termination, modification or replacement.

D. The Trustee shall have no duty to pay or collect any premiums or assessments on any group master policy or policies. Trustee shall not be required to institute any form of legal proceeding to collect any such premium or assessment. Likewise, the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder.

4. *Duties of Grantor.*

A. Grantor shall act as Administrator and perform all administrative duties in connection with the group master policy or policies of insurance issued to Trustee not performed by the issuing insurance company including, but not limited to, billing, collecting, and remitting premiums to the appropriate insurance company or companies, processing of applicatins [sic] for insurance coverage, issuance of certificates of insurance, and processing and payment of claims, together with making all decisions as to purchase, issuance, termination, modification or replacement of such group master policy or policies.

B. Administrator agrees to pay Trustee its regular and customary fee each year, or portion thereof, in advance, for its services hereunder, to be determined in accordance with Trustee's then current fee schedule. In addition, Administrator shall reimburse Trustee for any and all reasonable and necessary expenses which it may incur in the performance of its duties as Trustee including, but not limited to, attorney fees and costs.

5. *Resignation or Removal of Trustee.*

A. Trustee may resign at any time by giving to Administrator 30 days prior written notice of resignation. Trustee may resign immediately at any time that Administrator amends, or attempts to amend, this Trust Agreement without the written consent of Trustee.

B. Administrator may remove Trustee at any time by giving to Trustee 30 days prior written notice of removal.

6. *Appointment of Successor Trustee.* In the event of resignation or removal of any Trustee, Administrator shall have the right to appoint a Successor Trustee. Such Successor Trustee may qualify by accepting this Trust in writing to Administrator.

7. *Amendment or Termination of Trust.*

A. This Trust may be terminated by Administrator at any time by giving to Trustee and all Participants 30 day [sic] prior written notice of termination.

B. This Trust shall terminate immediately in the event that any group master insurance policy or policies held hereunder terminate, lapse, expire without being renewed, or are cancelled for any reason unless the coverage or coverages provided in such policy or policies are replaced immediately without any gap(s) in coverage by like coverages provided by a substitute or successor insurance company approved by Trustee in writing in advance.

C. This Trust may only be amended by the Administrator, with the consent of Trustee. Both the

Amendment and Trustee's consent thereto shall be in writing to be effective.

8. *Liability of Trustee and Hold Harmless.*

A. Trustee shall be protected in relying on any paper or document believed by it to be genuine and to have been made, executed or delivered by the party purporting to have made, executed or delivered the same, and shall be protected in relying and acting upon the opinion of counsel or upon the guidance and directions of Administrator in connection with any matter pertaining to execution of the Trust. The Trustee shall not be liable for any action taken or omitted by it in good faith nor for the act of any agent, employee, or attorney selected by Trustee with reasonable care. The Trustee may delegate any of its ministerial powers or duties hereunder to its agents or employees.

B. Trustee shall be protected in acting upon direction of the Administrator, and Administrator shall hold Tustee [sic] harmless from any and all liability, loss, damage, cost or claim of any type whatsoever as a result of serving as Trustee hereunder except to the extent that such liability, loss, damage, cost or claim results from the negligence of Trustee in failing to safely hold the group master insurance policy or policies hereunder or in failing or refusing to perform any duty set out in Paragraph 3 hereof after written notice and request by Administrator.

9. *Dealing with Third Parties.*

A. No insurance company or other party shall be deemed a party to this Trust for any purpose or be

deemed responsible for its validity or sufficiency. The obligations of any insurance company or other party contracting with the Trustee shall be measured and determined solely by the terms and conditions of the group master insurance policy or policies or other contracts which may be involved.

B. Any employer may become a Participating Employer in the insurance plan or plans provided by the group master insurance policy or policies held by Trustee by applying therefore and meeting all requirements imposed by Administrator and the insurance company underwriting such policy or policies including, but not limited to, underwriting and eligibility requirements. The terms and limitations of the insurance coverages provided to the Participants and their covered dependents the eligibility therefore, and the extension and termination of coverage thereunder shall be governed solely by the rules and regulations promulgated by Administrator and approved by the underwriting insurance company or companies, and the applicable certificates and policies of insurance. Trustee shall have no direct or implied obligation to any Participating Employers.

10. *Spendthrift Clause. Limited Interest.*

A. No part of the Trust Estate, the group master insurance policy or policies held by Trustee hereunder nor the insurance proceeds or benefits payable under such group master insurance policy or policies, shall be subject to executing or other legal process for any abligation [sic] of any Participating Employer, or to the claims of creditors of any Participating Employer, in any manner, nor shall any such Participating Employer, have the

power to sell, mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise (except to the extent that policy benefits may be assignable to health care providers under the terms of any policy or policies hereunder.)[.]

B. During the continuance of this Trust, no Participating Employer, nor any person claiming by, through, or under any one or more of them, shall have any right, title or interest in or to the Trust Estate, or any part thereof, except for such person's interest in any benefits provided under the terms of the group master insurance policy or policies hereunder.

11. *Severability.* In the event that any one or more provisions of this Trust Agreement shall be held or determined to be invalid or unenforceable by any court of competent jurisdiction or other appropriate authority, the remainder of this Trust Agreement shall continue and remain in full force and effect as if said invalid and/or unenforceable profision [sic] or porvisions [sic] had not been included herin. [sic]

12. *Governing Law.*This Trust is created and accepted in the State of Tennessee and all questions pertaining to the validity or construction of said Trust shall be determined in accordance with the laws of the State of Tennessee.

In witness whereof, and as evidence of acceptance ofthe [sic] Trust created hereby, the parties have executed this agreement of the 15 day of March, 1985.

Witnesses:
/s/ Linda Carroll

Witnesses:
/s/ Dianne B. Flores
/s/ Patricia [Illegible]

Third National Bank
in Nashville,
Trustee

By: /s/ Elizabeth C. Thompson
Title
Vice President

Group Programs, Inc.
Grantor/Administrator

By: /s/ Patrick Huval President
Title

[LOGO]

DURHAM LIFE INSURANCE COMPANY
(HEREIN CALLED THE INSURANCE COMPANY)
HOME OFFICE: RALEIGH, NORTH CAROLINA

POLICY NUMBER : 3171

GROUP POLICYHOLDER:

THIRD NATIONAL BANK, NASHVILLE, TENNESSEE, TRUSTEE OF THE SUMMIT INSURANCE PLAN TRUST

EFFECTIVE DATE : May 1, 1985

ANNIVERSARY DATE : May 1

PREMIUM DUE DATE:

First day of the calendar month

POLICY MONTH:

The first day of a period which begins with the premium due date and ends on the day preceding the next following premium due date.

In consideration of the application for this policy, a copy of which is attached and made a part hereof, and in consideration of the payment by the Policyholder during the continuance of this policy of all premiums when they fall due as provided herein, the insurance Company agrees to pay the amounts of insurance set forth herein, with respect to the several persons insured hereunder, in accordance with and subject to the provisions of this policy.

The Provisions hereafter contained are part of this policy as fully as if recited over the signatures affixed below.

In Witness Whereof, the Insurance Company has issued this policy as of the effective date above, which is the date of issue hereof.

/s/ F. F. Skipper
Secretary

/s/ [Illegible] Womble
President

/s/ Romet Stevens, Jr.
Registrar

GROUP INSURANCE POLICY AS MODIFIED BY G1380 PAGES ATTACHED HERETO

G10300

SECTION — AMOUNTS OF INSURANCE AND COVERAGES — PLAN CHANGES

You are insured for the amounts and coverages for which you applied and were accepted by us[.] Your amount of insurance will be decreased or any coverage terminated automatically should your status under your employer's plan change or if your employer reports any such changes to us[.] Your amount of insurance will be increased or a coverage may be added only if all these conditions are met:

(a) your status changes to one eligible for increase or coverage addition.

(b) it is reported to us by your employer.

(c) you have furnished us with the current health history and status for yourself and any dependent who is a covered person and whose coverage would be affected by the change and have been approved by us for the change. Any approval of an increased amount of insurance, or coverage added, will be effective on the first day of a calendar month, subject

on that day to the same provisions as the effective date provisions above which require you to be actively at work or a dependent not then be totally disabled nor confined to a hospital or other institution.

SECTION — JURISDICTION

This policy is delivered in and is governed by the laws of Tennessee.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff, v. GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	Civil Action No. 91-208 Section: A Judge John V. Parker

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT OF RICHARD FITZGERALD

RICHARD FITZGERALD, having been duly sworn, does depose and state that the following is based upon his personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am a first vice-president of Third National Bank in Nashville. In that capacity I supervise the operation of

the Employee Benefit Department of Third National Bank's Trust Department.

3. Third National Bank in Nashville is a national banking association with its principal place of business in Nashville, Tennessee.

4. Third National Bank in Nashville has no branches or other offices located within Louisiana.

5. On or about January 22, 1991, Third National Bank was served with a Citation and Petition from the Nineteenth Judicial District Court of Louisiana. True and correct copies of the Citation and Petition as they were served upon Third National Bank are attached hereto as *Exhibit 1.* [Exhibit 1 is found at A-23.]

6. In connection with my responsibilities of supervising the Employee Benefit Department, I have reviewed the records of Third National Bank relating to the trusts between Third National Bank and Group Programs, Inc.

7. True and correct copies of the two Insurance Trust Agreements between Third National Bank and Group Programs, Inc. are attached hereto as *Exhibits 2 and 3,* respectively. [Exhibit 2 is found at A-47; Exhibit 3 is not attached.]

8. Third National Bank did not ever solicit this business from anyone in Louisiana, nor did Third National Bank transact any business in the State of Louisiana that was connected with its responsibilities under these trusts.

FURTHER AFFIANT SAYETH NOT.

/s/ Richard Fitzgerald
RICHARD FITZGERALD

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, RICHARD FITZGERALD, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 28th day of February, 1991.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94
[SEAL]

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

NO. 364,878 DIVISION "L"

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana

versus

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF

FILED: _____ _____

DEPUTY CLERK

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT OF RICHARD FITZGERALD

RICHARD FITZGERALD, having been duly sworn, does depose and state that the following is based upon his personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am a first vice-president of Third National Bank in Nashville ("Third National"). In that capacity I supervise the operation of the Employee Benefit Department of Third National's Trust Department.

3. Upon the commencement of this lawsuit, and after some investigation of the facts had begun, I became

aware that bank accounts had been opened in Louisiana banks (the "Accounts") in the name of Summit Insurance Plan Trust (the "Trust"). Prior to the commencement of this lawsuit, Third National was unaware of the existence of these Accounts.

4. In addition, after the commencement of this lawsuit and after discovery had commenced, I became aware that specific and aggregate coverage insurance policies had been obtained in the name of the Trust (the "Insurance Policies). Prior to the commencement of this lawsuit, Third National was unaware of the existence of these policies.

5. Third National never signed signatory cards for the Accounts, which are listed in the plaintiff's Supplemental Memorandum in Opposition to Third National Bank's Motion to Dismiss for Lack of Personal Jurisdiction in this matter (the "Supplemental Memorandum"). Further, Third National was never advised that these Accounts had been opened. Third National did not have check writing or other privileges associated with access to the Accounts, nor did it ever receive statements from the banks where these Accounts were open. To the best of my knowledge, Third National had no knowledge these Accounts existed. Third National had no ownership interest in these Accounts and had no power or authority to control the funds in these Accounts.

6. The Trust Agreement between Group Programs, Inc. and Third National did not authorize Third National to open these Accounts or to have any interest in these accounts.

7. Third National has no record showing that it had any interest or control over the Insurance Policies, which are identified in the Supplemental Memorandum. Third National did not apply for those Insurance Policies nor was it aware of the existence of those Insurance Policies until after the commencement of this lawsuit.

8. Third National did not learn that the Durham Life Policy had been terminated until early 1990, Third National has no record that it was advised by Durham Life Insurance Company, Group Programs, Inc. or any other entity that a policy obtained from Durham Life Insurance Company (the "Durham Life Policy") was being terminated or had been terminated.

9. Group Programs, Inc. ("Group Programs") never advised Third National that the insurance policy offered by the Summit Insurance Plan Trust (the "Trust") was changed from being fully insured by the Durham Life Policy to being self-insured. Third National had no knowledge of this change and did not authorize, sanction or participate in the change in the Trust from being fully insured to self-insured.

10. With respect to the Master Administrative Agreement effective June 1, 1988, Third National did not believe it was required to perform the duties listed under Article I, Section 1. Third National did not perform the duties listed for "The Company" to undertake.

FURTHER AFFIANT SAYETH NOT.

/s/ Richard Fitzgerald
RICHARD FITZGERALD

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, RICHARD FITZGERALD, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at Office, this 22d day of January, 1992.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94

[SEAL]

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	:	NUMBER 354,758
PLAINTIFF,	:	DIVISION "G"
VERSUS	:	
THIRD NATIONAL BANK, AS TRUSTEE OF THE SUMMIT INSURANCE PLAN TRUST, PATRICK E. HUVAL, GROUP PROGRAMS, INC., THE SUMMIT INSURANCE PLAN, AND THE SUMMIT INSURANCE PLAN TRUST	:	
DEFENDANT.	:	

TRANSCRIPT OF THE DEPOSITION OF
PATRICK E. HUVAL

REPORTED IN THE ABOVE ENTITLED AND NUMBERED CAUSE, BEFORE ESTELLA O. CHAMPION, CERTIFIED SHORTHAND REPORTER, AUTHORIZED TO ADMINISTER OATHS OF WITNESSES, PURSUANT TO SECTION 961.1 OF TITLE 13 OF THE LOUISIANA REVISED STATUTES OF 1950, AS AMENDED, PURSUANT TO THE FOLLOWING STIPULATION:

REPORTED AT THE OFFICES OF:

DAVIDSON, MEAUX, SONNIER, McELLIGOTT
& SWIFT
810 SOUTH BUCHANAN STREET
LAFAYETTE, LOUISIANA 70502
COMMENCING AT 10:00 A.M. ON
OCTOBER 25, 1990.

* * *

[p. 10] trust that they administered, sort of the same thing, similar to what Summit was.

Q He was living in Nashville?

A Yes.

Q And why were you put in contact with him? How did they think he would be able to help you?

A Well, he knew Mr. Smith, the A.I.G. field agent that suggested it to me, knew Mr. Smith through – both had worked at one time with Caroon and Black out of Nashville, or maybe Memphis, but they had worked together before. They knew each other.

Q Did you personally meet with Gibbs Smith?

A Yes.

Q You went up to Nashville?

A Yes.

Q This was in 1985?

A As a matter of fact I employed him as a consultant to help me with the trust.

Q Was this in 1985?

A 1985.

Q What was the purpose of this retainer agreement with Smith? What were you trying to accomplish with him?

A First of all he was operating a trust, and I and the girl that handled the computer and the

* * *

[p. 14] Q. What was the name of Mr. Smith's M.E.T?

A. I can't remember. I'm going to say Benefit Programs, Inc., but I'm not positive of that.

Q. Do you know if it was doing business in Louisiana?

A. No, I don't know that.

Q. What did you understand the trustee's role would be under this insurance trust agreement; that is the role of Third National Bank of Nashville?

A. As it says there, to hold the policies and amendments to the policies and things of that sort.

Q. The agreement, L-1, shows a signature by Elizabeth Thompson on behalf of Third National Bank, listing her as a vice-president of Third National Bank. Did you ever meet with that woman?

A. No, I didn't.

Q. Did you meet with anyone at Third National Bank of Nashville?

A. No, I didn't.

Q. Ever?

A. Ever.

Q. At the time the trust was set up, did you have occasion to speak by telephone with anybody at Third National Bank?

A. I don't remember that. I couldn't remember [p. 15] if I did or not.

Q. Who arranged to have this signed by Third National Bank in Nashville?

A. Mr. Smith.

Q. So he took it over there and had it executed by them?

A. I don't know if I mailed it to him and he mailed it to them or whatever, but initially.

Q. What did you understand Third National Bank of Nashville would get out of this trust agreement? Why did they enter into it?

A. I have no idea.

Q. Let me show you a copy of a letter from Third National Bank from Elizabeth Thompson addressed to Mr. Smith, ask if you recall getting a copy of that letter?

A. I don't remember getting – I don't remember getting that. I may have since it says, to Pat Huval.

Q. Do you think Mr. Smith may have sent it to you?

A. Could be. Could be, I don't remember.

Q. You just don't remember?

A. Could be, I don't remember.

MR. CURRY: I will mark it as L-2.

[p. 16] Q. Do you know when the trust agreement terminated?

MR. McELLIGOTT: When it was supposed to terminate?

A. I think they issued a termination in 1990.

Q. You received correspondence from Third National Bank?

A. Yes, that they were going to terminate it about the time of the liquidation notice.

MR. CURRY: I will mark as L-3 a letter from a Mr. Robert Mayer addressed to you dated February 21, 1990.

A. Yes, I remember receiving that.

Q. Is that the first communication you recall seeing where they attempted to terminate the trust?

A. That's correct.

Q. Prior to that you never received any communication from Third National Bank purporting to terminate the trust?

A. Maybe something, I might have received correspondence on amendments that we may have sent or things like that, but not on termination.

Q. You don't have any specific recollection of any amendments?

A. No.

* * *

[p. 27] A. Sometime in the spring of '88 I received a letter from Durham Life that they were going to terminate our trust; and they had another trust in Louisiana they were going to terminate, that they actually moved out of several states at that time.

Mr. Romer Stevens had retired, and I think the management had changed in that department , and they were reducing their volume in small group trusts.

I asked them at the time for an extension of a month or two, which they gave me, to be effective June 1.

Q. Did they cite loss ratios or experience as the reason?

A. No, no, they just indicated they were getting out of Louisiana.

Q. Do you recall the name of the other trust that was being terminated at the same time?

A. I don't remember the name, but it was out of the New Orleans area.

Q. It was another multiple employer trust?

A. Yes.

Q. What did you do in reaction to this notice from Durham, other than getting an extension and so forth?

A. Well, I first attempted to get carriers to [p. 28] replace Durham, first of all. I, you know, with the help of Mr. Gibbs Smith and other people in the industry, I contacted a number of carriers. In addition to that, I also solicited quotes from carriers on specific and aggregate

coverage for the trust as a backup or a replacement of the fully insured product. And I had gotten one company – and I don't remember the name or the location – to indicate a willingness to fully insure it. But they were small and associated with offshore captive type operations, so I wasn't secure, wasn't comfortable with that. So I decided to move it into a specific and aggregate coverage basis.

Q. Prior to June 1 of '88, you had none of the stop-gap coverages to which you have made reference?

A. Didn't have to do that, Durham Life –

Q. Because it was all fully insured?

A. Fully insured, and Durham Life handled all the insurance.

Q. What types of insurance had Durham provided?

A. Had Durham provided?

Q. Right.

A. The life and health insurance.

Q. In its entirety? The full insurance that Summit provided was provided by Durham. Is the right?

[p. 29] A. Yes, exactly.

Q. What reasons were given by the other companies for refusing to provide coverage?

A. Well, the insurance industry is highly cyclical; not only in property and casualty, but the life and health – not the life, but the health, also. And at that time the small group business was not popular, or the companies were not expanding into the small group business.

Four, five years before they may have been the hottest thing going, and then four, five years later, at that current time, not very many companies were expanding their operations in the small group business.

Q. Before I leave the Durham plan, let me ask you a couple of questions about the addenda to L-4. Am I reading the commission and fee information correctly to mean that on every policy written, for the first year commission would be ten percent?

A. The first year commission to the agent would be ten percent.

Q. That would in all cases be the total amount of commission paid for that insurance?

A. Correct, to the agent.

Q. There wasn't a commission as such paid to [p. 30] anyone else, besides the agent who actually placed it?

A. No, that's correct.

Q. Group Programs, Inc., if they sold it directly would receive that commission?

A. We didn't sell any, Group Programs, Inc., didn't sell any policies.

Q. So Group Programs, Inc., never got a fee as commission?

A. No, we got an administrative fee of 13 percent, plus an additional $15 dollars per group, what they call billing fee or administrative fee.

Q. $15 per month?

A. Per month per group.

Q. And that went directly to Group Programs, Inc.

A. Group Programs, right.

Q. And that was treated as an administrative fee?

A. Right, it was called a billing fee, and it was either called an administrative fee or billing fee, mostly billing fee.

Q. Now the administrative fee of 13 percent did go directly to Group Programs, Inc?

A. That's correct.

Q. And that was 13 percent of the gross [p. 31] premiums collected?

A. That's correct.

Q. And did I understand your testimony earlier to mean that all of the premiums went directly into the Durham account in North Carolina?

A. First of all, it was deposited in a general ledger account in Group Programs.

Q. In south Louisiana?

A. Right. And then on a monthly basis we remitted to Durham Life all but 23 percent. We paid ten percent to the agent. We remitted what, 77 to Durham Life, and paid ourselves the 13 or kept the 13 percent for our administrative fee.

Q. So the 23 percent never got to North Carolina account at all?

A. No, they wanted a net only. They didn't want the gross.

Q. What about the $15 per employer?

A. We kept that, too.

Q. The account that was maintained by Group Programs, Inc., in south Louisiana, was it used for anything other than collecting and transmitting the net premiums?

A. Sure, it was used for our total operation.

Q. Let me next refer you to another master

* * *

[p. 70] beginning of the month, some groups may not pay or may decide to cancel. So we waited until the month was closed, and then made disbursements usually around the tenth or the fifteenth of the month following.

Q. Now, the money that was left in the account for that month under that example, I guess eight hundred seventy – eighty-seven thousand dollars for that month, what would happen to that money? What would it be used for?

A. We would use it for paying claims.

Q. Well, first commissions would be paid, wouldn't they?

A. Yes, well, commissions and fixed costs and, you know, the normal operating.

Q. Well, let's itemize the sorts of things that would have come out. Commissions, as I understand, would vary between 25 and 26 percent?

A. Right.

Q. And that would be done on the fifteenth of each month following the previous months?

A. Yes, yes, generally.

Q. And from the remainder of course would be paid the claims.

A. Right.

Q. What else would come out of that?

* * *

[p. 83] A. Yes, and he was an actuary. He was a senior actuary with Pilot Life for years.

Q. How did you come to retain his services?

A. Well, in early 19, – first of all, going back to June 1 of 1988, we always attempted to, even if we had purchased a specific and aggregate coverage for the trust, I continued the search to try to get a company to come in and fully insure it. And the market was tight for small group trusts, so I didn't have any luck in doing that.

But in early 1989, about in February or March of '89, I made contact with a small company headquartered in Texas called Navaho Life that was interested in funding the trust or making it a fully insured product.

I had agreed with them, we had a signed administrative agreement. I had all the forms printed. Mr. Dunlap had approved the forms. And that took from about March through about July or maybe August, when I received a letter from them saying that they had just had an audit by the insurance department, and the insurance department

didn't want them to expand their sales any further. So that the contract we had with them was no longer –

At that time they had their own actuary

* * *

[p. 202] A Well, indicated that Durham had pulled out of the state, that they were canceling – that policy was being canceled, that we could offer them a replacement through the program that we had set up with, you know, through United National specific and aggregate. And at that time we had a 20 percent rate increase on June 1 of '88.

And we lost, you know, some of the business. But some of the business stayed on even with that increase. Because I had increased the business 20 percent at that time, on June 1 of '88.

Q Increased the rates?

A The rates, rates, yes.

Q Across the board. Did attrition from that act, is that one of the things that led you to want to affiliate with CAN and Community Health Network, things like that?

A No CAN, if I recall and I don't have the exact date – I recall we started doing business with CAN in early '88. So CAN had been on board at that time.

Q But did you begin dealing with CAN after you found that Durham was going to terminate?

A We dealt with CAN before Durham terminated.

Q Before they notified that they were going

EXHIBIT
L-2

[LOGO]

Nashville, Tennessee 17244

Elizabeth C. Thompson
Vice President and Trust Officer

March 20, 1985

To Pat Huval [hand-written notation]

Mr. Gibbs Smith, CLU
Benefit Programs, Inc.
Nashville, TN 37215
[address crossed out]

Re: Group Programs, Inc. Insurance Trust

Dear Mr. Smith:

I am enclosing an executed copy of the Group Programs, Inc. Insurance Trust Agreement.

If you have any questions, please give me a call.

Sincerely,
/s/ Elizabeth C. Thompson
Elizabeth C. Thompson
Vice President and
Trust Officer

ECT:agm
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff,	)	Civil Action No. 91-208
v.	)	Section: A
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	)	Judge John V. Parker

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

AFFIDAVIT OF GIBBS SMITH

GIBBS SMITH, having been duly sworn, does depose and state that the following is based upon personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am currently president of Benefit Programs, Inc.

3. In late 1984, I was introduced to Patrick Huval who told me that he was interested in setting up a multi-employer insurance plan trust.

4. After a telephone conversation with Mr. Huval who was in Louisiana, he traveled to Nashville in early 1985 to explore the possibility of setting up such a trust.

5. Mr. Huval visited my office and observed my operation in early 1985. He decided to get into the business of administering insurance trusts similar to the ones I handled.

6. Mr. Huval and I entered into a contract whereby I agreed to help him set up a multi-employer insurance plan trust.

7. I supplied Mr. Huval with all the forms necessary for setting up the Summit Insurance Plan Trust, including the form which is the basis of the Insurance Trust Agreement that was dated March 8, 1985.

8. I made the initial contacts with the Durham Life Insurance Company, which served from 1985 to 1988 as the insurer of the Summit Insurance Plan Trust, and Third National Bank in Nashville, which served as trustee of the Summit Insurance Plan Trust.

9. The contacts with Durham Life Insurance Company and Third National Bank in Nashville were based upon my previous dealings with them on similar trust arrangements.

10. Third National Bank did not solicit the business of Huval or the Summit Insurance Plan Trust. I made the initial contact with Third National Bank in Nashville to set up the trust arrangement.

11. At no time was I ever employed or acting as the agent of Third National Bank in Nashville, nor did I ever solicit business in Louisiana or otherwise transact any business in Louisiana on behalf of Third National Bank in Nashville.

FURTHER AFFIANT SAYETH NOT.

/s/ Gibbs Smith
GIBBS SMITH

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, GIBBS SMITH, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at Office, this 2nd day of March, 1991.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94

[SEAL]